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COMPULSORY ARBITRATION THE LOGICAL EVOLUTION OF WORKMEN'S COMPEN- SATION ACTS.

Police power has justified the enactment of workmen's compensation laws, whether with optional or compulsory features, on very broad grounds. These grounds include the welfare of the State as dependent upon its industries being conserved even as much or more so than on the welfare of its wage-workers, according to a most excellent opinion by Judge Fullerton, of Washington Supreme Court, in *State v. Clausen*, 117 Pac. 1101.

To pass a workmen's compensation law on this theory, if it is valid as to hazardous or extra-hazardous employments, it also ought to be valid as to ordinary employments. If its application is confined to employers with a minimum of employees, this is but a detail in the law. But, above all, it would seem it is only necessary that a purpose involving an interest in the public shall be discerned to make a workmen's compensation law constitutional.

And this contention would seem to be amply supported by the opinion of Justice Holmes in the celebrated case of *Noble State Bank v. Haskell*, 219 U. S. 104, which in effect extended the police power so as to accommodate itself to all the needs of a growing nation.

Let it be remembered, however, that a Workmen's Compensation act, though proceeding *in invitum*, affects all kinds of employment, whether it relates to business affected with a public interest, as are public service corporations, or to those not so affected.

It might be less difficult to see that public service corporations would be bound to ac-

cept a workmen's compensation act than that ordinary business is, but these acts have not been solely aimed at such employments, and yet have been held constitutional. *Jeffrey Mfg. Co. v. Blagg*, 35 Sup. Ct. 167.

Is a compulsory arbitration law for the settlement of disputes between employer and employes, in industrial occupations, any less within the police power of the State than is a compulsory workmen's compensation act? Whatever may be said as to its tendency being to conserve the lives and health of employes, it certainly may not be claimed that it has any smaller relation to the public welfare than has the enforcement of a compensation act.

There may be no laying off of employes because of a compensation act or for its non-existence, but the police power intervenes in it to save workmen from long and doubtful waiting for recoveries and thereby throwing upon the public objects of charity. If such an act benefits the public in this regard, how much more does the securing of arbitration to obviate a wholesale abandonment of employment?

Furthermore, as the tendency of such abandonment is to cause riot and disorder, may not the State take measures against such? Is it any interference with the free right of contract to say that two or more individuals may not act in concert to an end, which is potential of riot and disorder, or which has a direct tendency to produce riot and disorder?

Besides controlling employes in this way, has not the State the right to prevent agreements between employers which may interfere with the right of employes to compulsory arbitration? This is but the correlative of the right to compel employes to submit.

If the end is the welfare of the State in the conserving of its industries, the well being of individual citizens in great classes and the preservation of peace and order, then to enforce the principle of compulsory arbitration is to consider that employers and

employees enlist in business largely as a soldier is enlisted in military service, except that employer or employee may quit when he pleases. But he may not conspire to prevent arbitration, if compulsory arbitration is provided for.

This presents a different question from that raised by the late enactment of Congress for an eight-hour law. The validity of that law is referable to the commerce clause of the Constitution, as also would be compulsory arbitration by act of Congress.

As harmful to state welfare, we will suppose that there is a strike designed to paralyze the supplying of milk to the public. Standards are prescribed as to milk in the interest of public health. Does not anyone see that a strike may be a serious interference with such regulation? Why, in the supplying of necessities to the people, should not the public have the right to protect itself from the consequences of agreements interfering with proper regulation, though the agreements do not contemplate interference?

Our law has been careful to protect the right of labor and of business to organize for its advantage, but it has failed to mark the limits of the purpose of organization. To conspire on the part of business to bring labor to terms, or to conspire on the part of labor to bring business to terms, when the result aimed at is through coercion by banding in concert, has no tendency rightly to exalt the free right of contract. It is rather the surrender of such freedom and when this becomes a menace to the public, it should be placed in the category of unlawful conspiracy.

To organize a labor union for the benefit of its members should not be looked upon as encouraging or legitimizing agreements which in their nature are conspiracies, and this seems especially true so far as what is called a sympathetic strike is concerned. This means coercion pure and simple, and that its ultimate purpose may be commendable is but to say that the end justifies the means for its attainment.

NOTES OF IMPORTANT DECISIONS.

FEDERAL EMPLOYERS' LIABILITY ACT—APPLYING LOCAL LAW TO APPEALS.—In *Louisville & N. R. Co. v. Stewart*, 36 Sup. Ct. 586, state law fixing penalty in appeals is upheld, where recovery under federal law was had and also state rule for adding interest to the judgment recovered below.

The court said: "The first of the other objections is that the Court of Appeals (Kentucky) was not authorized to add 10 per cent damages or the amount of the judgment as it did. But the railroad company obtained a supersedeas and the law of the state makes 10 per cent the cost of it to all persons if the judgment is affirmed. There was no obligation upon the state to provide for a suspension of the judgment and nothing to prevent it making it costly in cases where ultimately the judgment is upheld. So, the state may allow interest upon a judgment from the time it is rendered, if it provides appellate proceedings and the judgment is affirmed, as, but for such proceedings, interest would run as of course until the judgment was paid."

While the vesting of jurisdiction in the state courts of causes of action under this federal law, does not change in any way the rule of liability in different states, yet it would seem that if the things upheld as proper in one state cannot be allowed in another, there may be different recoveries in some appellate courts than in others. Also it is clearly intimated that in one state even the right of appeal might be taken away though in another it be allowed. We imagine, however, that it still might be open for one to get to a higher tribunal to review a decision on some construction of the federal law as or not giving or denying a right thereunder. But for mere error in applying the law to the evidence, would it not be true, that U. S. Supreme Court in writ of error to the state court would be limited just as if the cause of action was under state law?

INSURANCE — POLICY IN FAVOR OF WIFE SUBSEQUENTLY DIVORCED.—In *N. W. Mut. L. Ins. Co. v. Whitesell*, 188 S. W. 22, decided by Texas Court of Civil Appeals, it was held that where a wife was named as beneficiary in a life policy, her interest therein ceased on her being divorced.

This ruling follows *Hatch v. Hatch*, 35 Tex. Civ. App. 373, 80 S. W. 411, which applied the principle in a former Texas Supreme Court case, which held it to be "against public policy

to allow any one who has no insurable interest to be the owner of a policy of insurance upon the life of a human being."

But if a policy is lawfully issued, does change of circumstances invalidate it entirely?

In *Marquet v. Aetna Life Ins. Co.*, 159 S. W. 733, decided by Tennessee Supreme Court, it was ruled that a wife's interest in a life policy on the life of the husband was not extinguished by the subsequent divorce of husband and wife.

In 16 Am. & E. Encyc. Law, p. 846, it is said the principle which is applicable to insurance of property that there must be an insurable interest at all times in the property, "does not apply to life insurance for the reason that it is not a contract of indemnity. The only reason for requiring an insurable interest is to eliminate from the contract the character of a wager; and if a fair and proper insurable interest, of whatever kind, exists at the time of taking out the policy, and it is taken out in good faith, the object and purpose of the rule which condemns wager policies is sufficiently attained, and the insurer must pay the full amount of insurance according to the contract, without reference to the subsequent diminution or cessation of insurable interest."

There are cited to this proposition a number of cases, one being *Conn. Mut. L. Ins. Co. v. Schaeffer*, 94 U. S. 457, holding to the right of a divorced wife who paid the premiums after divorce to recover. It was not said this was a prerequisite to her recovery and it might be contended that if the premiums were paid by another this was in her behalf. There was a contract in this case valid at inception and certainly the company would have no right to nullify it or refuse to accept premiums to keep it up. Certainly, also, there might have been a certain interest which had ripened against the company. Could that be taken from the wife by the insured? We think not. The language we quote from the Texas Supreme Court is broad and does not differentiate as it should.

NAVIGABLE RIVERS—OYSTER BED SUBJECT TO DANGER OF POLLUTION.—The theory of right of State in navigable waters in trust for the public is illustrated in a case where the owner of an oyster bed below low-water mark of a tidal navigable arm of the sea sued a city for pollution of the water by emptying sewage therein. *City of Hampton v. Watson*, 89 S. E. 81, decided by Virginia Court of Appeals.

In this case it was held that from early English decision the public right in tidal navigable salt waters could not be disposed of to the detriment of the public and the lease to a private individual of an oyster bed therein was taken subject to this right. It, furthermore, was ruled that "the sea is the natural outlet for all the impurities flowing from the land and the public health demands that our large and rapidly growing seacoast cities should not be obstructed in their use of this outlet, except in the public interest."

It was further said that the plaintiff in this case was especially subject to the *jus publicum* at stake because he "leased this land with full knowledge of the then existing sewage emptying into Hampton Creek and subject to the public right to increase the same as necessity required on account of the growth in population of the city of Hampton."

The principle invoked was sound enough not to need any reinforcement in the facts above recited, and all that need here be said is that the American view of what are navigable streams as distinguished from the English view, viz.: tidal streams and streams navigable in fact, whether tidal or not, ought to carry as full recognition of the *jus publicum* as was recognized under English law. Many cases are cited by the Virginia court in support of its conclusion.

EFFECT OF SUCCESSIVE SALES OF ALL PARTNERS' INTERESTS UPON RIGHTS OF CREDITORS OF THE FIRM.

Assuming that A., B. and C. constitute a firm, and contract debts; assuming that, thereafter, each severally sells, or suffers to be sold, his individual interests in the firm; what, thereafter, are the rights of the firm creditors against the property and assets of the former firm? Such is the question proposed for discussion. Not many adjudicated cases seem to have dealt with it, but those that do disclose a direct conflict of authority. In view of the fact that the question might arise at any time, and also in view of the further fact that the question involves some of the most fundamental principles in the law of part-

nership, some consideration of it may not be without profit.

It is conceived that the lack of harmony in the decisions will ultimately be found to be due to a divergence of opinion with reference to two of the elements involved:—first, in respect to the recognition, or non-recognition, of a partnership as a quasi entity; and second, in respect to whether a waiver or loss of a partner's equity or lien must be shown affirmatively, or is to be presumed, when a sale of an individual partner's interest has been disclosed.

It must be borne in mind that throughout this discussion, we do not have in view, primarily, those classes of cases wherein firm property or assets have been sold or disposed of by the firm as such, or wherein are disclosed laches, or the intervention of superior rights, liens or equities. The presence of any of these factors in the case puts it beyond the scope of what is here proposed to treat. It must be conceded that many of the cases which at first glance might seem to involve our question, as a matter of fact, do not. Upon closer analysis in such instances, it will be found that one or more of the factors above referred to are present.

For example, since *ex parte Ruffin*,¹ decided in 1801, which is regarded as the leading case in all our courts, it has been universally conceded, even if it was earlier doubted, that a partnership may, as a firm act, sell and dispose of its property and assets, and give a title thereto which will be free and clear of any and all claims of general creditors. The only limitation upon this power is that it shall be exercised bona fide and not in fraud of the creditors. Hence, in such case, in the absence of bad faith on the part of the partners, the creditors are without recourse against the subject-matter of the sale. And as *ex parte Ruffin* expressly holds, this is equally true where the sale is of the interest of one of two partners to the other,² and is actually

executed.³ The same principle has been held to apply in the case of a sale by one of four partners to the other three, all agreeing, and then by one of those three to the other two.⁴ But none of these afford any ground or reason for asserting that successive and independent sales of the several interests of all of the different partners are equivalent to a joint act, though we shall later see that the form of the agreement has an important bearing upon the question of whether or not the partner's lien or equity has been waived or lost.

It is equally unquestioned that an individual partner can sell and dispose of his share or individual interest in the firm without consulting his co-partners.⁵ Under such circumstances, what the vendee takes is only the interest which his vendor had. And it is immaterial in this regard, though significant, as will appear, in connection with the consideration of the question of waiver or loss of the partner's equity, whether the sale of the interest is voluntary or involuntary, or whether the succession occurs in some other manner. In *Taylor v. Fields*,⁶ decided in 1799, Lord Chief Baron McDonald says: "In law there are three relations: first, if a person chooses for valuable consideration to sell his interest in the partnership trade, for it comes to that; or if his next of kin or executors take it upon his death; or if a creditor takes it in execution, or the assignees under a commission of bankruptcy. The mode makes no difference; but in all those cases the application takes place of the rule, that the party coming in the right of the partner comes into nothing more than an interest in the partnership, which cannot be tangible, cannot be made available, or delivered, but under an account be-

(3) *Ex parte Wheeler*, Buck 25, Fitzgerald v. Christt, 20 N. J. Eq. 90.

(4) *Baker's Appeal*, 21 Pa. 76, 59 Am. Dec. 752.

(5) *Lindley, Partnership*, 364; *Jones v. Way*, 78 Kan. 535, 97 Pac. 437.

(6) 4 Ves. 396.

(1) 6 Ves. 119.

(2) *Ex parte Williams*, 11 Ves. 3.

tween the partnership and the partner; and it is an item in the account that enough must be left for the partnership debts." And this has always been the law.⁷ The vendee is in no better position than his vendor.⁸

What is it then, which the vendor-partner has, and his vendee, or successor, takes? In *West v. Skip*, *supra*, decided in Chancery in 1749, Lord Hardwick says: " * * * nothing is to be considered his (a partner's) share but his proportion of the residue on balance of the account." And this rule is fully recognized.⁹ Included in this right to a "proportion of the residue on balance of account," by necessary implication, is the right of each partner to insist upon the application of firm property and assets to the discharge of firm obligations, so that the account may be taken, and the residue determined. And this is called the "partner's equity," or "partner's lien."¹⁰ It arises in equity, and rests upon the presumed intention of the partners as between themselves.¹¹ Its purpose is to indemnify the partners against liability upon the joint obligations of the firm.¹²

Growing out of this "equity" or lien of the partners has arisen a corresponding "equity" or "lien" of firm creditors, based upon the fact that the partner's right operated in favor of the creditors.¹³ It is, however, strictly derivative, and can only in a loose sense be called a lien.¹⁴ Being derivative, it is, of course, lost to the cred-

itors immediately it is lost, or waived, by the partners.¹⁵

From the above authorities, and others which will be cited, it amply appears that the real basis of the "equity" or "lien" is the conception, originally that of equity, that a partnership is in some sense and to some extent a thing apart from the individuals composing it, in other words, a quasi entity. It owns property and owes obligations. The several partners are personally liable for such obligations, and to indemnify them against such liability, they have the right, the equity, in effect to this extent a lien, to require that the partnership property go to pay partnership debts. The modern trend, both in legislation and decision, is very strongly toward the recognition of this quasi entity, as witness the Federal Bankruptcy Act, the Practice and Revenue Acts of the several states, together with the rapidly accumulating number of decisions by the courts of last resort.¹⁶

Reference has been made to a loss or waiver of the partner's equity and a consequent loss of the creditor's derivative equity. This may, of course, occur. But the question still remains as to what proof of it must appear in a particular case. Does it follow, as a matter of law, from the fact that a sale or disposition of the partner's interest is shown, or must further facts appear from which an inference must be drawn that the partner intended to surrender his equity as well as his interest? In other words, are the interest and the equity separable? From an examination of the nature of the case, it would seem that they are. By disposition of his interests in the firm, a partner is not generally relieved

(7) *Bank v. Vandolah*, 188 Ill. App. 123.

(8) *Fox v. Hanburv. Cowper* 445; *West v. Skip*, 1 Ves. 239.

(9) *Menagh v. Whitwell*, 52 N. Y. 146; *Case v. Beauregard*, 99 U. S. 119; *Costello v. Costello*, 209 N. Y. 252, 103 N. E. 148; *Grocery Co. v. Owens*, 161 S. W. 911.

(10) *Ex parte Ruffin*, *supra*; *ex parte Williams*, *supra*. And the other authorities cited in this paragraph.

(11) *Arnold v. Hagerman*, 45 N. J. Eq. 186, 17 Atl. 93, 14 Am. St. 712.

(12) *Hoxie v. Carr*, 12 Fed. Cas. 6, 802.

(13) *Arnold v. Hagerman*, *supra*; *Case v. Beauregard*, *supra*.

(14) *Case v. Beauregard*.

(15) Citations, *supra*.

(16) *Jackson Bank v. Durfey*, 72 Miss. 971, 18 So. 456; *Cole v. Reynolds*, 18 N. Y. 74; *Kelly v. Scott*, 49 N. Y. 595; *Gates v. Beecher*, 60 N. Y. 518, 19 Am. Rep. 207; *Hess v. Lowrey*, 122 Ind. 225, 23 N. E. 156, 17 Am. St. Rep. 355; *Paige v. Paige*, 71 Iowa, 318, 32 N. W. 360, 60 Am. Rep. 799; *Francis v. McNeal*, 228 U. S. 695, 33 Sup. Ct. 701, 57 L. Ed. 1029; *Good v. Jarrard*, 93 S. C. 229, 76 S. E. 698.

from his liability for its debts, nothing further appearing.¹⁷ The reason for the rule providing for the equity still persisting, it would seem that the rule itself should still apply, until it affirmatively appears that the partner has elected to surrender his right. But let us see how the matter stands on authority. In *West v. Skip*,¹⁸ decided by Lord Hardwick in 1749, there was an agreement by one partner to sell to the other of two upon certain terms, the purchasing partner to give security for payment, and an order was entered in court to that effect. But the security was never given, and the court proceedings terminated adversely to the selling partner. Meanwhile, the purchasing partner was in possession of the firm property, and he had suffered it to be seized by certain of his creditors. In a subsequent bill in equity to assert the vendor-partner's lien, the claim was set up that he had lost it, and should be levelled with the rest of the creditors of the purchasing partner. This, however, was denied by the Chancellor, upon the ground that nothing that had been done had destroyed the lien, that there was no evidence that the selling partner had "waived his property and resorted to personal security." In *ex parte Ruffin*, previously cited, the express ground of the decision that the lien had been waived was that the vendor at the time of the sale had made an agreement with his co-partner, the vendee, and had taken a bond from him to be held harmless against the firm debts. This was taken as evidence of an intent to waive the lien and provide for something in its stead, and the Chancellor remarks that the bond is good and will be paid. So, in *ex parte Williams*, also already cited, the evidence showed that at the time of the sale of the interest, the vendee had expressly agreed to pay all the firm debts, and the vendor had accepted such agreement. And this was evidence

of an intent to surrender the equity.¹⁹ And so in all the cases involving this phase of the general question, except in those representing one of the two conflicting lines which involve the particular question we are considering.

Where the sale is to a stranger, rather than to a co-partner, the necessity of evidence to show a waiver or loss of the equity would seem all the more pressing. Merely by virtue of the sale of the interest, the vendee, a stranger, does not become a partner.²⁰ Nor, in the absence of an express agreement to that effect, does he become liable to pay the firm debts as they existed at the time of his purchase.²¹ But, as we have already seen, the vendor still remains liable for the debts. And where the sale is one under execution of the interest of an individual partner, the reason for the requirement of affirmative evidence is even more apparent, since the whole proceeding is one adverse to the partner, and no presumption as to intent should arise therefrom. He is still liable for the firm debts, as before. It is unquestioned that a "purchaser under an execution against one partner has no claim until the partnership debts are paid, except on the separate interest of the individual partner in the residue."²²

In the light of the foregoing consideration of principles, let us examine the conflicting authorities upon our question, and first, *Menagh v. Whitwell*,²³ decided in 1873. This case represents the view that the partners', and consequently the creditors', lien does survive the successive dispositions of the several partners'

(19) So also, *Smith v. Edwards*, 26 Tenn. 77, 7 Hun.p. 106, 46 Am. Dec. 71; *Croone v. Bivens*, 39 Tenn. 191, 2 Head 339; *Dimon v. Hazard*, 32 N. Y. 65.

(20) *Jones v. Way*, 78 Kan. 535, 97 Pac. 437.

(21) *Nix v. First National Bank of Pueblo*, 23 Colo. 511, 48 Pac. 522.

(22) *In re Corbett*, 5 Sawyer 206.

(23) 52 N. Y. 146.

(17) *McAreeavy v. Magirl*, 123 Iowa 605, 99 N.W. 198.

(18) 1 Ves. 239.

interests, when it does not affirmatively appear that there was a waiver by the partners, or a loss of the lien through laches or the intervention of superior rights or equities. This last phase, however, we shall not consider extensively, as it is not involved in our question. In Menagh v. Whitwell the facts were that a firm consisted of five members, and as such contracted debts, which were subsequently in due course reduced to judgment. Execution was then taken, and levy made upon property that had belonged to the firm, and still existed in specie, and sales thereof were duly had. Between the time of contracting the debts, and that of the levy of execution, each of the several partners had successively disposed of his interests. Two had sold to a third. Then two gave chattel mortgages on their interests, which were foreclosed. And the last transferred his interest to a stranger. It appeared that there was no fraud in any of the transactions, nor had there arisen any other and superior rights, liens or equities. The question arose between the firm creditors and the several transferees of the individual interests, as to the ownership, at the time of the levy, of the former firm assets, the transferees, plaintiffs, claiming that the levy and sale was wrongful. It did not appear in evidence, in connection with the chattel mortgages and the last transfer of interest, that there was any intent on the part of the partners to surrender or release their equity.

The court considers the application of all of the principles which we have hereinabove outlined, and expressly disapproves and disallows the contention that "the separate transfers of the individual interests of all the partners divested the title of the firm," and that, *ipso facto*, "a transfer of the individual interest of the partner in the firm to a third person extinguishes the equity of the partner, and consequently that of the creditors, which is dependent upon it," which contention,

however, it is recognized, is apparently supported by authority.

The court also considers the bearing of that class of cases, "where a bona fide sale has been made by a retiring partner in a solvent firm of two members to his co-partner, the latter assuming the debts," and concludes, as we have seen, that "in those cases, the joint property was converted into separate property by the joint act of all the members of the firm. They had power to dispose of the corpus of the joint property."

The court recognizes the rule with reference to what is taken by the vendee of a partner's interest, saying, "If the legal effect of the transfer were set forth in the instrument, it would be seen that all purchaser acquired was a right to an account, and to the partner's share in the surplus, after payment of the debts, when ascertained, and that he had no right to that part of the property which was required for the payment of debts; that the sale was subject to the debts. * * * I do not see how this right can be affected by the question whether the separate interests of all or only one of the partners is thus sold." And again: "The parties who claim to have acquired severally, by transfer from the individual partners, the respective shares of such partners, each having only the right which the law gives the assignee of the share of a single partner, if they have in any way obtained possession of the property itself, must hold it clothed with the trust which would have attached to it in the possession of the partners, their assigns; and as to the corpus of the property, it remains the joint property of the firm and liable to be seized for its debts." This passage also indicates a means by which a court of equity may gain jurisdiction of a controversy over firm assets, a point which we shall have occasion to refer to in connection with another case.

The court also recognizes the theory of the quasi entity, saying: "The well es-

tablished rule which excludes creditors of the several partners from the partnership property until that has paid the debts of the partnership is derived from the acknowledgment that a partnership is a body by itself. In its relation to its creditors, it is placed upon the basis of having its own creditors and possessing its own property, which it applies to the payment of its debts; and after this work is done, there is a resolution of the body into its elements."

With reference to the question of the presumption alleged to arise from the mere fact of a sale of a partner's interest, the court has this to say: "When he sells to his co-partner, he relies upon his assumption of the partnership debts; and unless he stipulates for an application of assets to that purpose, he parts with all lien upon them. But when he sells to a stranger not liable for the debts, or his interest is sold upon execution, is not the right to have the debts paid out of the property a right of indemnity personal to himself which does not pass by the sale? Could it be tolerated that the interests of a partner should be sold under execution against him, on which sale only the value of his interest in the surplus could be realized, and that the purchaser should be allowed to take the corpus of the property, and leave him liable for the debts," thus plainly intimating that if such result is claimed, it must be supported by evidence other than the transfer itself, evidence that would disclose an intent on the part of the partner to release his personal indemnity.

The court also says: "The case differs materially from a sale by a retiring co-partner to his co-partner, who is personally liable for the debts directly to the creditors; but even such a sale is valid only when there is no insolvency at the time. To sell to an insolvent partner would be a clear fraud. How much more clearly apparent would be the injury to the creditors by a sale to a person not

liable for the debts, if such sale had the effect to relieve the property from them." And again: "How absurd it would be to hold that all the partners, by making separate assignments of their respective shares in the firm property to their individual creditors, could effectually divest the firm of all its property, and apply it to their individual debts, leaving nothing for the partnership creditors."

And it is finally held that, "Until some act is done by the firm to transfer the joint interest, no separate act of any or all of the partners, or proceedings against them individually with reference to their individual interests, should be held to affect the title to the firm so as to preclude a creditor of the firm, having a judgment and execution from levying upon the firm property. * * * As against firm creditors, no greater effect should be given to such transfers when made by all the partners separately than when made by a portion of them; but the property should be deemed to continue in the firm until its title has been divested by some act of the firm." Or, it might be added, until it is made to appear that there have been laches, or that superior rights or equities have intervened.

As an illustration of the conflicting doctrine, we may discuss *Case v. Beauregard*,²⁴ decided in 1878. This case is frequently cited, and, being by our highest court, is accorded great weight. It is highly important, then, that it should be rightly understood. The facts were these: A., B. and Beauregard were partners to operate under a lease of a railroad. Obligations were created by the lessees, among them that under which complainant claims. Subsequently, A. assigned all his interests in the firm to a third party. Thereafter, B. made a similar assignment, assuming also to pass A.'s interests by virtue of a power of attorney. Still later, B.'s assignees and Beauregard also

(24) 99 U. S. 119.

made an assignment of all of their several interests, expressly subject, however, "to the debts and liabilities of the company, whether due or claimed from the lessee or the stockholders." The complainant filed his bill in equity to subject the assets of the former firm, which had actually passed into the possession of the defendants, to the payment of his debt. It did not appear that in any of the assignments mentioned there was any reference to a release or waiver by the partner assigning of his right to insist that the firm assets be used to pay firm debts. It also did not appear that any claims, liens or equities had intervened which ought to be treated as superior to the demand of complainant at the time he sought to assert his right, or that there had been any laches.

Upon these facts, the court, speaking through Justice Strong, says: "The effect of these transfers and act of fusion (the assignment of interests in which Beauregard participated) was very clearly to convert the partnership property into property held in severalty, or, at least, to terminate the equity of any partner to require the application thereof to the payment of the joint debts. Hence, if, as we have seen, the equity of the partnership creditors can be worked out only through the equity of the partners, there was no such equity of the partners, or any of them, as is now claimed, when this bill was filed. No one of the partners could then insist that the property should be first applied to the satisfaction of the joint debts, for his interest in the partnership and its assets had ceased."

Earlier in the opinion, the court used this language: "Their equity (creditors') however, is a derivative one. It is not held or enforceable in their own right. It is practically a subrogation to the equity of the individual partner to be made effective only through him. Hence, if he is not in a position to enforce it, the creditors of the firm cannot be. (Citing au-

thorities.) But so long as the equity of the partners remains in him, so long as he retains an interest in the firm assets as a partner, a court of equity will allow the creditors of the firm to avail themselves of his equity, and enforce through it the application of those assets primarily to payment of the debts due then, whenever the property comes under its administration.

"It is indispensable, however, to such relief, when the creditors are, as in the present case, simple contract creditors, that the partnership property should be within the control of the court and in the course of administration, brought there by the bankruptcy of the firm, or by an assignment, or by the creation of a trust in some mode. This is because neither the partners nor the joint creditors have any specific lien, nor is there any trust that can be enforced until the property has passed *in custodiam legis*. Other property can be followed only after a judgment at law has been obtained and an execution has proved fruitless.

"So, if before the interposition of the court is asked the property has ceased to belong to the partnership, if by a bona fide transfer it has become the several property either of one partner or of a third person, the equities of the partners are extinguished, and consequently the derivative equities of the creditors are at an end. It is, therefore, always essential to any preferential right of the creditors that there shall be property owned by the partnership when the claim for preference is sought to be enforced." (Citing *ex parte Ruffin* and other authorities.)

And the court ultimately holds that the complainant has "no specific claim upon the property, nor is there any trust which a court of equity can enforce."

Thus it appears that what the court holds amounts to this: that simple contract creditors of a firm, having in their

own right no lien or equity on firm assets, but only a derivative equity through the equity of the partners, have no rights which they can enforce against such assets, when all of the partners have disposed of their several interests, because, as a matter of law, the partners have thereby extinguished their own equities, and with them, the derivative equities of the creditors. This is tantamount to saying that the independent acts of the several partners, (treating voluntary and involuntary sales as the same), after all have acted with respect to their several interests, are equivalent to an act of the firm, as such. And this wholly irrespective of the circumstances and conditions surrounding the several independent transfers in question.

Thus, also, it appears that the fundamental fact upon which the court bases its reasoning is that "the property has ceased to belong to the partnership," and by bona fide transfer has become the several property either of one partner or a third person, and this is assumed to result, as a matter of law, as seen above, from the several assignments set forth in the case. This would certainly seem to be assuming too much in view of the fact that the last one, in which Beauregard, the last partner, participated, was expressly subject to all claims, and in the light of all of the authorities heretofore examined. No evidence of any such state of facts was disclosed, and, of course, in view of the court's assumption, is not commented upon, either as to its presence or its absence.

It is possible that the court viewed the last transfer of interest, that of Beauregard, as being in effect a transfer on behalf of the firm after dissolution, and as such releasing the partner's lien or equity. This would explain why the court cites the authorities it does, which in nearly every instance are of a sale by one partner in a firm of two to the other, or a sale by the firm as such, neither of

which lines of authority have, as already seen, any direct bearing upon the question we are considering, and which, it would seem, was clearly involved in Case v. Beauregard. That the act of Beauregard was for himself and his interest alone seems apparent from the form of the assignment, and the conditions under which it was made, as set forth in the facts considered by the court. And of such class are the cases of Coover's appeal,²⁵ and McNutt v. Strayhorn,²⁶ which the court also cites. They hold that successive transfers of partner's interests, without more, extinguish the partner's and creditor's liens.

In this connection, it will be valuable and instructive to consider another case arising out of the same transactions that were involved in Case v. Beauregard, namely, Bank v. Carrollton Railroad,²⁷ decided by the Supreme Court of the United States in 1870, in which the opinion is also delivered by Justice Strong. In this case, the assignee of one of the partners sought to enforce a joint ownership in the corpus of the effects of the firm. This right was denied by the court, and in the course of the opinion, the following language is used, which we see is entirely in line with what have been shown to be the established principles of partnership applicable under such conditions: "It has repeatedly been determined, both in the British and American courts, that the property or effects of a partnership belong to the firm and not to the partners, each of whom is entitled only to a share of what may remain after payment of the partnership debts and after a settlement of the accounts between the partners; consequently, that no greater interest can be derived from a voluntary sale, or by a sale of it under execution." (Citing many authorities, most of which have been alluded to in our discussion.) Tak-

(25) 29 Pa. St. 9, 70 Am. Dec. 149.

(26) 39 Pa. 269.

(27) 11 Wall. 624.

ing the principle of this decision and comparing it with what we have already seen in Case v. Beauregard, it becomes at once apparent that the difference in result, as between them, is due to the fact that in the former case only one partner had conveyed his interest, while in the latter, all interests had been conveyed, though successively. The effect of this difference has, as we have seen, been well considered in Menagh v. Whitwell, and demonstrated to be only apparent.

It appears that the court in Case v. Beauregard lays stress upon the necessity of the property being in custodiam legis. This requirement would seem to readily met by giving effect to the following from Menagh v. Whitwell: "The parties who claim to have acquired severally, by transfer from the individual partners, the respective shares of such partners, each having only the right which the law gives the assignees of the share of a single partner, if they have in any way obtained possession of the property itself, must hold it clothed with the trust which would have attached to it in the possession of the partners, their assignors." This would seem to create the "trust in some mode" which Justice Strong says is one of the ways by which a court of equity might gain jurisdiction.²⁸

It has already been noted that the court in Case v. Beauregard considers a waiver or loss of the partners' equities to result, as a matter of law, from the fact of successive transfers of the interests of the individual partners. It is also to be noted, that nowhere in its opinion, is the question of the *quasi entity* of the partnership referred to. Hence, it would seem clear that the conflict between the two decisions considered is due, as previously remarked, to these two omitted factors, which, however, it is believed, are of vital importance in any proper disposition

of the question. Hence, it would seem that Menagh v. Whitwell represents the best reason and the best law, and is most nearly in harmony with the trend of the law in respect to partnerships generally. Therefore, in conclusion, it would further seem that we might with confidence assert that until it is made to appear affirmatively that the partners have elected to waive or surrender their lien, or until it appears that laches, or superior rights, claims or equities have intervened, the title of the firm is not divested, and the right of access of firm creditors to the assets of the former firm is not lost, simply because all the partners have successively sold, or suffered to be sold, their individual interests in the firm.

H. W. DANFORTH.

Denver, Colo.

BILLS AND NOTES—NEGOTIABILITY.

WHITE v. HATCHER, et al.

Supreme Court of Tennessee. Aug. 9, 1916.

188 S. W. 61.

A series of notes, payable at different times, but all to become due upon default of one are negotiable; the time of payment not being uncertain and contingent within Negotiable Instruments Act, § 1, subsec. 3, and section 4, providing that an instrument is negotiable which is payable, "on or before a fixed or determinable future time specified therein."

GREEN, J. This is a suit by the indorsee of several promissory notes, claiming to be an innocent holder. The defendant, the maker, admits the execution thereof, but avers failure of consideration and denies that the notes were negotiable.

There was a decree for the complainant in the Court of Civil Appeals, that court finding him to be an innocent holder and construing the notes sued on to be negotiable instruments. A petition for certiorari has been granted and the cause argued here.

(28) Ketchum v. Durkee, 1 Barb. Ch. 480; In re Corbett, 5 Sawyer, 206.

All the notes are of like effect and the first is, in words and figures, as follows:

"\$25.00. September 15, 1913.

"Sixty days after date I promise to pay to the order of Jas. L. Akers twenty-five and no one hundredths dollars, with interest from date at the rate of six per cent. per annum, value received. This note is first of a series of twelve notes given for the purchase of one Marathon roadster automobile. The conditions of said purchase are, that the title to the above car is to remain in the hands of Jas. L. Akers, and so remain, until all the notes are paid in full with interest and cost of collection, including attorney's fees. In default of payment on any of the said notes, the whole shall become due, and the said Jas. L. Akers shall have the right to take possession of said car and sell the same for the balance of purchase money as provided by law.

W. T. Hatcher."

Indorsed on back:

"Jas. L. Akers."

(1) It is only necessary to consider that provision of the notes declaring that the whole series shall become due upon default in payment of any one of said notes. Other provisions of the notes have been elsewhere considered by the court and held not to affect negotiability.

It is urged in behalf of the maker that the insertion of the words under consideration rendered the time of payment of the notes uncertain and contingent within the meaning of section 4, c. 94, of the Acts of 1899. The Negotiable Instruments Act.

An instrument to be negotiable must be payable on demand, or at a fixed or determinable future time. Subsection 3, § 1, c. 94, Acts 1899.

Further quoting from this statute:

"Sec. 4. An instrument is payable at a determinable future time, within the meaning of this act, which is expressed to be payable:

- "1. At a fixed period after date or sight; or,
- "2. On or before a fixed or determinable future time specified therein; or,
- "3. On or at a fixed period after the occurrence of a specified event, which is certain to happen, though the time of happening be uncertain.

"An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect."

The notes in suit are not payable on a contingency. They are payable at all events at the several times fixed on their faces. Any may become due earlier if the maker defaults in payment of one maturing previously.

The statute authorizes the execution of a negotiable instrument payable "on or before a

fixed or determinable future time specified therein." If thus expressed, negotiability is not impaired, although the maker may, if he find it convenient, treat the note as matured and discharge it any day after issuance.

Since under subsection 2, § 4, a negotiable note may be so written as to mature at any time before the fixed date, according to the convenience of the maker, may not this language of the statute be held to justify a more definite acceleration, dependent upon the act of the maker? Such a construction seems to be sound. Maturity would not be controlled by the whim or caprice of the holder, as where the latter was authorized to confess judgment for the maker, whenever the note was deemed insecure, and *Bank v. Russell*, 124 Tenn. 618, 139 S. W. 734, Ann. Cas. 1913A, 203, and like cases have no application.

The exact question before us came before the Supreme Court of the United States. While that case did not arise under the negotiable instruments statute, the court recognized the general rule of the law merchant to be that:

"To constitute a valid promissory note, it must be for the payment of money at some fixed time, or upon some event which must inevitably happen, and that its character as a promissory note cannot depend upon future events, but solely upon its character when created."

The court further recognized the negotiability of a note payable on or before a named date, and after a review of the decisions said:

"In view of these authorities, as well as upon principle, we adjudge that the negotiability of the notes in suit was not affected by the provision that upon the failure of the maker to pay any one of the notes of the series to which those in suit belonged, the rest should become due and payable to the holder." *Chicago Railway Equipment Co. v. Merchants' National Bank*, 136 U. S. 268 (10 Sup. Ct. 999), 34 L. Ed. 349.

It is to be noted that section 4 of the statute, defining "determinable future time" contains nothing materially different from the provisions of the law merchant, as these provisions were understood by the Supreme Court, and we are accordingly inclined to follow *Chicago Railway Equipment Co. v. Merchants' National Bank*, supra, and to hold the notes here in suit negotiable.

The Negotiable Instruments Act declares that the sum payable is a sum certain, although payable "by stated installments, with a provision that upon default in payment of any installment, or of interest, the whole shall become due." Subsection 3, § 2.

The Supreme Court of Wisconsin has held that a stipulation maturing a whole series of notes upon default in the payment of one does not impair negotiability. The Wisconsin statute, however, is slightly different from the Tennessee statute. The former statute has an additional subsection among those defining instruments payable at a determinable future time, as follows:

"4. At a fixed period after date or sight, though payable before then on a contingency." St. Wis. 1915, § 1675—4.

This subsection seems to have been added to the statute to meet former decisions of the Wisconsin court, and the holding of the court referred to above is rested on the statute. *Thorp v. Mindeman*, 123 Wis. 149, 101 N. W. 417, 68 L. R. A. 146, 107 Am. St. Rep. 1003.

The case of *Iowa National Bank v. Carter*, 144 Iowa 715, 123 N. W. 237, is cited in opposition to the views we have indicated. The notes there held to be non-negotiable, in addition to the stipulation for the maturity of all upon default in respect to one, provided:

"If the said party of the first part shall sell, assign, dispose of, or attempt to sell, assign, dispose of, or remove from said county of Iowa without the consent of said Port Huron Machine Co., Ltd., the whole or any part of said goods or chattels, or if at any time the said party of the second part shall deem themselves insecure,"

—the whole of the notes should become due.

The Iowa court might obviously have based its conclusion, as to the character of the notes, upon that portion of their contents just quoted, without consideration of the acceleration clause.

Roblee v. Union Stockyards National Bank, 69 Neb. 180, 95 N. W. 61, is not in point. In that case, by a collateral agreement, the maker undertook to make payments on the notes by the delivery of milk to a certain creamery, by which deliveries his notes were to be credited. The court said the transaction involved the payment of uncertain sums at uncertain times, that it would be impossible to tell how much would be due on these notes at maturity, and that such notes were not negotiable.

Inasmuch, therefore, as we find no direct construction of the Negotiable Instruments Act to the contrary, and, believing the act, in this particular, made no change in the rules of the law merchant, we prefer to follow the interpretation of the latter rules adopted by the Supreme Court in *Chicago Railway Equipment Co. v. Merchants' National Bank*, *supra*, and adjudge that the negotiability of a series of

notes is not affected by a provision that upon the failure of the maker to pay any one of the notes, the whole of the series shall become due.

Such a result is undoubtedly desirable in furtherance of trade and industry. A conditional vendor, selling implements, equipment, and machinery with lieu of title retained, is thus protected against depreciation of his security, incident to its use. Purchase-money notes, so secured, may be more readily marketed. The security being better, credit will be easier, and small enterprises may be organized and outfitted with less difficulty. It is said that these notes might find their ways into different hands, and that the holder of the later notes would not know it if default was made upon an earlier note; that such default would mature the whole series, and the holder of the later notes would thus unwittingly and perhaps unwillingly have the notes in his possession rendered past due.

(2) The answer to this is that the provision that the series of notes shall become due upon the failure of the maker to pay any one of them means that such other notes shall become due at the option of the holder. *Chicago Railway Equipment Co. v. Merchants' National Bank*, *supra*. Unless the holder of the other notes so elects, said notes will not become due until their fixed maturities.

The holder of earlier notes, upon one of which default is made, can only declare due and payable the notes in his possession. His act cannot affect the notes in the possession of another.

Upon the whole case we think the correct result was reached by the Court of Civil Appeals, and the decree of that court is affirmed.

Note.—Right of Holder to Declare Maturity of Note for Failure to Furnish Additional Collateral.—Negotiable Instruments Law provides that a note is not rendered non-negotiable by the fact that it is payable by stated installments or that on failure to pay an installment all the notes remaining unpaid shall become due. In *Finley v. Smith*, 165 Ky. 145, 177 S. W. 262, L. R. A. 1915 F. 777, it was held that a provision for accelerating maturity by demanding additional security and refusal to comply did not render a note non-negotiable. The Negotiable Instruments Act is cited as supporting this construction, because it leans to the view that independent promises by way of securing the payment of the note itself were not intended to affect a promise in itself to pay. It was said: "The promise to strengthen the collateral under penalty of the note maturing at once did not change the date of its maturity any more than would the provision in a note payable in installments that upon

default in the payment of the installment the whole should become due. We think that the promise to do an act in addition to the payment of money that will render the note not negotiable must be a promise that conflicts with some one of the essential characteristics of a negotiable note."

Further on this case argues that: "It is quite usual to pledge collateral as security for the payment of a negotiable note, and we do not think that any narrow construction of the law should be adopted that would impair the value of this kind of security. * * * This condition in the note is merely supplementary to the fixed and controlling promises, and is really nothing more than additional security for the payment of the instrument."

In Kennedy v. Broderick, 132 C. C. A. 381, 216 Fed. 137, L. R. A. 1915 B, 472, there was a note payable by installments, and provision that if collateral depreciates, failure to furnish additional collateral should mature all installments. This was held not to affect negotiability. It was said: "It is clear that the stipulation for additional collateral and the sale of collateral are pertinent only to the pledge part of the transaction, and that the only condition which could, in any event, be carried into the promise to pay part, is the one by which the maturity might be anticipated. That provision, however, could only affect the time provision of the note to the extent of causing the maker to promise to pay ninety days after date or sooner on demand of the holder after the maker's default in putting up additional securities."

In Hunter v. Clarke, 184 Ill. 158, 56 N. E. 297, 75 Am. St. Rep. 160, it was said: "There can be no difference, in principle, between the exercise of an option by the maker to pay before a certain day or a provision that the note shall be due upon the happening of some event prior to the date fixed and an option of the holder to declare it due upon the occurrence of some event."

But a provision in a note giving the right to a holder to call for additional collateral when the holder deems the security insufficient does make maturity so doubtful as to take away negotiability. Holladay State Bank v. Hoffman, 85 Kan. 71, 116 Pac. 239, 35 L. R. A. (N. S.) 390, Ann. Cas. 1912 D, 1. A distinction was drawn in this case from a note where mere default in payment by the maker matured the note. It was said, however, that: "Here maturity of the note is to be accelerated by the failure of the maker to do something in addition to the payment of money, and both contingencies are made to depend upon something over which he has not the absolute control. It is within the power of the holder, by refusing assent to what the maker has done, arbitrarily to make the note due at any time between the date of its execution and six months thereafter. If the holder is not satisfied with the additional security, the note matures at once, and thus the time at which it may mature would depend upon the time at which the holder declared himself dissatisfied with the security delivered by the maker."

In line with the Holladay case is Lincoln Nat. Bank, 14 C. C. A. 273, 66 Fed. 887, and also Commercial Nat. Bank v. Consumers' Brewing Co., 16 App. D. C. 186.

This kind of ruling appears to have prevailed more greatly before Negotiable Instruments Law was enacted, and there is nothing except implication which overrules it. On the other hand it might be claimed, that there arises implied refusal to overrule it in the principle *expressio unius, exclusio alterius*. This law expressly provides that a provision in a note payable by installments that default maturing the whole note does not destroy negotiability, leaves it to be inferred that failure to provide additional security maturing a note does destroy it, especially, if it is left to holder to say how much additional security is required and its character.

C.

BOOK REVIEWS.

RICHARDS' ABRAHAM LINCOLN, THE LAWYER-STATESMAN.

This discussion of one side of Mr. Lincoln's character by John T. Richards, of Chicago, will be of peculiar interest to lawyers. It is not a biography of Lincoln, but presents the results of "an investigation into the record of Abraham Lincoln, as a lawyer." It presents his views upon the subjects of universal suffrage and the reconstruction of the Confederate State governments at the close of the Civil War, and his attitude toward the judiciary, upon which there has been considerable misunderstanding in recent years.

There is appended a full list of Mr. Lincoln's cases before the Supreme Court of Illinois. One hundred and seventy-five appeals were argued by Mr. Lincoln before that court and reported in the Illinois Reports. These cases involve every conceivable point of law, criminal, equitable and common law. Mr. Richards pertinently remarks that "there were in those days no specialists among the members of the bar of Illinois." The lawyer followed the court in its circuit and handled all the business which his friends and clients confided to him.

Mr. Lincoln was a successful lawyer, not flashy, brilliant, egotistical, but quiet, careful and convincing. He was a fluent talker and made a pleasing impression on his hearers, due probably to his transparent frankness and honesty in dealing with any question at issue. He was considered the greatest jury lawyer at his bar and this title to pre-eminence was attested by the testimonials of his opponents at the bar, including Leonard Swett, himself a great advocate, and Stephen A. Douglas.

A full account is given of President Lincoln's handling of legal affairs as President. Mr. Lincoln had such a great regard for the rights of property (in his mind only second to the

rights of man) that he spent much time in working out a method of emancipation that would have compensated every slave owner for the losses suffered. His attitude toward the matter of reconstruction is well known, even in the Southland, where he is now regarded as one of the best friends the South ever had. His untimely death threw the American nation back a whole generation in solving the problems of healing the wounds of fratricidal strife.

Printed in one volume, containing 259 pages, bound in blue cloth and published by Houghton Mifflin Company, New York.

CORPUS JURIS. VOLUMES 4, 6 AND 7.

Volume 4 of this serial came to us after we had reviewed Volume 5 and in due course of time Volumes 6 and 7 reached our table. The alphabet has now come in titles of subjects down to "Bills," with which Volume 7 ends, so far a remarkable achievement in treatment.

Volume 4 begins with "Appeal and Error," and ends with "Arbitrary;" Volume 6 begins with "Attachment" and concludes with "Bank Paper;" and Volume 7 starts with "Bankruptcy" and ends with "Bills;" Volume 5 having been reviewed in 82 Cent. L. J. at page 252.

This work is brought out by the same publishers as was Cyc, a short term for a work of mammoth proportions, that has become as familiar to lawyers as is the term Code to the local practitioner. Indeed, it may be thought, that a Code without the Cyc for its interpreter may be a puzzle without a key. Corpus Juris is the fuller assurance that the key for the Code is found and at the same time it unlocks the treasures of common law and equity jurisprudence. When this great work is viewed from the latter angle we cease to wonder at its bulk, but our wonder rather is that the law has been so greatly condensed, yet not to the degree that its serviceability is in any way impaired. The wilderness of instances is brought within practical control, so that marshy exhalations may be distinguished for what they are—products of a boggy intellectuality which disappear in the sunlight of correct precedent.

We gave an extended review of this great work in 82 Cent. L. J., at page 36, and refer our readers to that review. The work emanates from the eminent publishing house, American Law Book Company, of New York. Subscribers for the Cyc need it and those who have not subscribed to that work need it still more.

HUMOR OF THE LAW.

Captain—"What's he charged with, Casey?"

Officer—"I don't know the regular name fer it, captain; but I caught him a-flirtin' in the park."

Captain—"Ah, that's impersonatin' an officer."—*Judge.*

It is recorded that when Lord Halsbury was a barrister he was arguing a case on behalf of a Welshman, and showed a great knowledge of the principality and its people.

"Come, come," said the judge at length, "you know you cannot make yourself out to be a Welshman!"

"Perhaps not," replied the barrister, "but I have made a great deal of money out of a Welshman in my time."

"Well, then," replied the judge, suppose we call you a Welshman by extraction?"—*St. Louis Star.*

A correspondent writes us about his first case. We believe his letter is worth passing on. He states: "My client, who ran a cheese factory in Knox County, Illinois, was urged by the neighbors to prosecute a patron who, they claimed, had been skimming his milk for some years before taking it to the factory; but he, not being litigious, was reluctant to move in the matter. Finally he concluded to submit the matter to arbitration. The submission and the bond were drawn up; evidence was heard before the arbitrators, two of whom were justices of the peace, one of the latter being a member of the church mentioned in the award—if it could be one. I left the cheese factory after the evidence had been introduced and some remarks made by counsel for the respective parties, and returned to Galesburg. The local item from _____ Township in the newspaper that week contained the information that the arbitrators had found that the defendant had skimmed the milk before delivering it at the factory for several years, "to the advantage of the defendant and to the detriment of the plaintiff, but in as much as the said _____ (defendant) is a member in good standing of the Baptist Church of _____ Township, we adjudge that he pay the costs of this proceeding." My client informed me that, as a condition to bringing in this adjudication, the submission and the bond had been burned by the arbitrators.

"I have always tried to persuade myself that I did not lose this, my first, case; but some time before I die I would like to be convinced beyond a reasonable doubt that I really won it."

WEEKLY DIGEST

**Weekly Digest of ALL the Important Opinions
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1. Adverse Possession—Restrictions.—One can claim adverse possession by tenant to only cleared part of land in dispute, where tenant's lease restricts his use of premises to farming purposes only, with prohibition against cutting or destroying any timber.—Village Mills Co. v. Houston Oil Co. of Texas, Tex., 186 S. W. 785.

2. Assault and Battery—Damages.—Where a stronger man, without sufficient provocation, assaults a weaker one, the latter, though not seriously injured, may recover for injury to his feelings.—Trahan v. Benoit, La., 71 So. 893.

3. Attorney and Client—Criminal Conduct.—Attorney who acted as notary after expiration and before renewal of his commission, charging fees in a few instances, so doing through negligence instead of willfulness, was not guilty of criminal conduct by falsely pretending to be an officer.—People v. Harris, Ill., 112 N. E. 978.

4. Disbarment—That unfriendly relations existed between respondent in disbarment proceedings and those instigating and aiding prosecution of the information cannot affect the decision in any way where the attorney's improper conduct is proved.—People v. Harris, Ill., 112 N. E. 978.

5. Bankruptcy—Contempt.—The refusal to be examined, for which a bankrupt may be committed, involves contumaciousness, and must be

distinguished from lack of candor, untruthfulness, and perjury.—In re Blitz, U. S. D. C., 232 Fed. 276.

6. Fraternal Association—An incorporated fraternal benefit association is not an insurance corporation, within the provision of the Bankruptcy Act excepting such corporations from the benefits thereof.—In re Grand Lodge A. O. U. W., U. S. D. C., 232 Fed. 199.

7. Jurisdiction—A court of bankruptcy can entertain a petition in the bankruptcy proceedings by a judgment creditor of the corporation of which the bankrupt was an officer to have assets of the corporation transferred to the bankrupt applied to the payment of the judgment.—In re Goldberg & Sagman, U. S. D. C., 232 Fed. 194.

8. Jurisdiction—A judgment rendered by a state court directing the sale of notes of a bankrupt which had been attached is void, where neither the bankrupt nor his trustee were before the court when it was rendered, and the bankrupt was insolvent when the attachment suit was begun, so that the attachment was void under Bankr. Act, § 67f.—De Fricce v. Bryant, U. S. D. C., 232 Fed. 233.

9. Pledge—Where a bankrupt has pledged his own and customers' securities, his securities are to be applied first to the payment, then those of his customers rightfully pledged, and lastly those of his customers wrongfully pledged.—In re H. B. Hollins & Co., U. S. C. A., 232 Fed. 124.

10. Practice—Intervening creditors are not entitled to notice of a continued hearing before the master on the question whether the claims of the original petitioners were sufficient in amount.—In re Smith, U. S. D. C., 232 Fed. 284.

11. Practice—The withdrawal of part of the petitioning creditors does not prevent the court from proceeding with the adjudication at the request of other petitioners, though less in number and amount of claims than required to institute proceedings.—In re San Jose Baking Co., U. S. D. C., 232 Fed. 200.

12. Preference—Where a bank in due course of business, without notice that the makers were insolvent, took notes secured by a deed of trust, the fact that the makers were adjudged bankrupts within less than four months does not impair the security.—Peninsula Bank of Williamsburg, Va., v. Wolcott, U. S. C. C. A., 232 Fed. 68.

13. Preference—Where a bankrupt confessed judgment in favor of a creditor, allowing it to obtain payment to exclusion of others, and creditor had reasonable ground to believe that such transaction would effect preference, it is a preference, within Bankr. Act, § 60b, as amended in 1910.—Grant v. National Bank of Auburn, U. S. D. C., 232 Fed. 201.

14. Preference—A sale in attachment proceedings in another state of notes given to a bankrupt is not a preference, where there was no transfer by the bankrupt, and he did not procure or suffer the judgment to be rendered.—De Fricce v. Bryant, U. S. D. C., 232 Fed. 233.

15. Priority—A court, which approved a trustee's report and authorized him to sell

bonds and a vendor's lien, did not thereby warrant the priority of such claims over other claims, so that it was judicial bad faith for the same court to thereafter hold other claims prior to the claims sold.—*Taylor v. Kimmerle, U. S. C. A.*, 232 Fed. 134.

16.—**Pro Rata Distribution.**—Shares represented by stock in a corporation found in possession of bankrupt firm of stockbrokers, though insufficient to satisfy its customers, should be allotted to them pro rata.—*Duel v. Hollins, U. S. S. C.*, 36 S. Ct. 615.

17.—**Selection of Trustee.**—Where there was a struggle over the selection of a trustee, held, that it was not improper for the referee to refuse to allow the wife of the bankrupt to vote, though her claim, which was disallowed, might be amended, where her vote would determine the choice of trustee.—*In re Ballantine, U. S. D. C.*, 232 Fed. 271.

18. **Banks and Banking—Cashier.**—A bank and its receiver in insolvency, are bound by drafts issued by its cashier and by the admission of value received contained in such drafts, in the absence of proof that the payee had knowledge of the fraud of the cashier or the falsity of such admission.—*Pemiscot County Bank v. Wilson-Ward Co., Tenn.*, 186 S. W. 595.

19. **Beneficial Associations—Waiver.**—Where a labor union did not enforce strict compliance with letter of constitution as to time of payments of per capita tax, held, local union was entitled to rely on waiver until notice, and defendant is estopped from claiming suspension of the local lodge.—*Crogan v. Person, N. Y.*, 159 N. Y. Supp. 500.

20. **Bills and Notes—Acceptance.**—Where drafts by deputy marshal on United States marshal on claim for services and expenses assigned to plaintiff are not accepted, no right of action accrues against administrator of deputy marshal till money is collected from the government.—*Moore v. Harkins, N. C.*, 89 S. E. 43.

21.—**Attorney Fees.**—Even if suit on note containing stipulation for attorney's fees was in default, it was error, in absence of proof that defendant was notified of claims for attorney's fees, to render judgment therefor.—*O'Kelly v. Welch, Ga.*, '89 S. E. 76.

22.—**Negotiability—Instrument promising to pay money "negotiable and payable at" named bank is negotiable without words, "or order, or bearer."**—*Essig v. Porter, Ind.*, 112 N. E. 1005.

23.—**Notice of Infirmitiy.**—Where plaintiff cashed check given for salary within reasonable time after delivery, without knowledge of infirmitiy in its transfer by payee to party who cashed it in payment of gambling debt, the inception of the check having been valid, plaintiff could recover of drawers as bona fide holder for value before maturity.—*Poshkooff v. Bernstein, N. Y.*, 159 N. Y. Supp. 206.

24.—**Part Payment.**—Where borrower makes payment of part of debt to lender's attorney in fact, he owes only balance, regardless of whether payment is indorsed on back of note.—*King v. Boles, Ark.*, 186 S. W. 607.

25.—**Surety.**—Under agreement whereby indorsers renewed a note without the maker's signature, and whereby one indorsed such note without agreement fixing his liability and afterwards renewed the note, they would not be sureties, but principals.—*Wilson v. Thompson, Tex.*, 186 S. W. 773.

26. **Boundaries—Description.**—Where plaintiff's deed described his land as bounded on west by a road, he took title to center of the highway there being no words in the conveyance expressly or necessarily limiting boundary to side.—*Cronin v. Janesville Traction Co., Wis.*, 158 N. W. 254.

27. **Brokers—Agency.**—One who had taken applications for loans and to whom lender directed borrower to deliver papers was agent of lender and not of borrower.—*Brinton v. Maxey, Okla.*, 157 Pac. 1048.

28.—**Commissions.**—Where broker, on effecting a sale, payments on which were to be by installments, agreed in writing that commis-

sions should be paid pro rata from each installment as received, he was not entitled to commissions, except on installments paid.—*Colvin v. Post Mortgage & Land Co., N. Y.*, 159 N. Y. Supp. 361.

29.—**Commission.**—A broker employed to renew negotiations and make a sale of a business to parties already discovered is entitled to his commission if the sale is consummated, despite the fact that he did not discover the purchasers.—*Minter v. Rothschild, Mo.*, 186 S. W. 753.

30. **Carriers of Goods—Bill of Lading.**—Where seller consigning goods sent bill of lading to bank with directions to deliver goods on cash payment and execution of notes, and bank delivered goods without collecting the cash or requiring notes, its liability is not lessened by sum offered by buyer less than amount due.—*St. Louis Carbonating & Mfg. Co. v. Lookeba State Bank, Okla.*, 157 Pac. 1046.

31.—**Bill of Lading.**—Though the Carmack Amendment expressly requires that a common carrier issue a bill of lading for goods accepted for interstate shipment, issuance of same is not a prerequisite to the shipper's right to recover for loss or damage to the shipment.—*Barrett v. Northern Pac. Ry. Co., Idaho*, 157 Pac. 1016.

32.—**Connecting Carrier.**—Under the Carmack Amendment to Interstate Commerce Act of June 29, 1906, a carrier which receives an interstate shipment routed by it over another carrier's line is liable for any damage from negligence in transportation, whether the damage occurs on its line or that of the connecting carrier.—*Barrett v. Northern Pac. Ry. Co., Idaho*, 157 Pac. 1016.

33.—**Insurer.**—Common-law liability of carrier as insurer was not changed as to a loss on its own line by Carmack Amendment.—*Cincinnati, N. O. & T. P. Ry. Co. v. Rankin, U. S. S. C.*, 36 S. Ct. 555.

34. **Carriers of Live Stock—Joint Owners.**—A joint owner of a shipment of live stock was properly joined as plaintiff in a suit for damages to the shipment; nothing in the Carmack amendment depriving him of his right to join in the suit and recover.—*Kansas City, M. & O. Ry. Co. of Texas v. Corn, Tex.*, 186 S. W. 807.

35.—**Negligence.**—Railroad companies are liable for damages caused by failure to furnish a reasonably fit and suitable place in which to put stock received for shipment.—*McSpadden v. Lusk, Mo.*, 186 S. W. 731.

36. **Carriers of Passengers—Alighting.**—A carrier of passengers is not liable for injury to alighting passenger, stepping into $7\frac{1}{2}$ inch space between car step and station platform, in the absence of special circumstances.—*Gibson v. New York Consol. R. Co., N. Y.*, 159 N. Y. Supp. 514.

37. **Charities—Condition.**—A provision in a charitable subscription that a corporation is to be formed to carry the purpose of the gift into effect is usually deemed not a condition, but an expression of donors as to matters affecting the administration of the trust.—*Richards v. Wilson, Ind.*, 112 N. E. 780.

38. **Commerce—Employees.**—Under federal Employers' Liability Act April 22, 1908, the right of recovery arises only where the injury is suffered while the carrier is engaged in interstate commerce, and the servant is employed by the carrier in such commerce.—*Long v. Lusk, Ark.*, 186 S. W. 601.

39.—**Interstate Shipment.**—Shipment by complainants residing outside the state of railroad ties from points within state to their yard in the state for inspection and sorting before being shipped to foreign buyers to fill contracts made outside state before ties were purchased held interstate shipments entitling carrier to interstate rates.—*Lusk v. Atkinson, Mo.*, 186 S. W. 703.

40.—**Regulation.**—Under the United States Constitution power of Congress to regulate subjects of interstate commerce which, owing to local conditions, may also be regulated by

state legislation, only becomes exclusive when exerted, but when Congress acts it obliterates all state legislation on the subject.—*Lusk v. Atkinson, Mo.*, 186 S. W. 703.

41. Contempt—Interference with Process.—Where attorney for defendants, being informed of a forthcoming adverse judgment, procured defendants to execute a lease, rendering such judgment of little value, he was guilty of contempt, under section 753, Judiciary Law, providing that a court may punish disobedience of a lawful mandate or any unlawful interference with proceedings by which a right or remedy is impaired.—*Bartholomay Brewery Co. v. O'Brien, N. Y.*, 159 N. Y. Supp. 126.

42. Contracts—Construction.—A contract referring to land as "this day sold" indicates that it was executed after delivery of the deed to the land.—*Cutler v. Spens, Mich.*, 158 N. W. 224.

43. Exclusive Agency—Contract, employing agent to procure team and sell sewing machines, giving agent exclusive right in county so long as he should sell those machines, held valid for indefiniteness.—*Rogers v. White Sewing Mach. Co., Okla.*, 157 Pac. 1044.

44. Copyrights—Infringement.—There can be no infringement of copyright of work of fiction, unless defendant copies and appropriates the story; mere similarity of ideas being insufficient.—*Kirke La Shelle Co. v. Armstrong, N. Y.*, 159 N. Y. Sup. 363.

45. Corporations—Bankruptcy.—Bankruptcy of a corporation does not of itself work a dissolution.—*Stagg v. Spray Water Power & Land Co., N. C.*, 89 S. E. 47.

46. Capital Stock—Corporation, in absence of restriction, may subscribe to capital stock of another corporation, especially where charter confers power to buy and sell personal property of every description.—*Quitman Oil Co. v. McRee, Ga.*, 88 S. E. 921.

47. Equity—Though one sues a corporation at law on promise by it, inuring to his benefit, to assume the liabilities of the corporation of which it was successor, he is entitled to have the principles of equity applied in considering the facts and circumstances out of which the liability arose.—*Arlington Hotel Co. v. Rector, Ark.*, 186 S. W. 622.

48. Trust Fund—Corporation property is a trust fund for creditors, and cannot lawfully be diverted to any other purpose.—*Sweeney v. Heap O'Brien Mining Co., Mo.*, 186 S. W. 739.

49. Deeds—Blank for Name.—A blank signed deed cannot be given life by act of the grantee in filling it in under oral authority from the grantor.—*Barras v. Barras, Mich.*, 158 N. W. 192.

50. Delivery—Where a mother nine years before death made a deed of a farm to a son and left it in escrow to be delivered upon her death, but shortly before her death sent for it and destroyed it, there was a delivery.—*Petersen v. Bisbee, Mich.*, 158 N. W. 134.

51. Undue Influence—That grantee was for 14 years during her childhood and early womanhood employed by grantor does not show undue influence in absence of proof of fiduciary relation shifting burden of proof.—*Masterson v. Sheahan, Mo.*, 186 S. W. 524.

52. Dedication—Estoppel.—Where parties who had dedicated four-rod highway, which only affected their side of way, bought land on other side, held three years, and sold to plaintiff, the line fence remaining, and their deed to plaintiff bounding land on west by highway, plaintiff was not bound to recognize highway as four rods in width.—*Cronin v. Janesville Traction Co., Wis.*, 158 N. W. 254.

53. Electricity—Franchise.—The provisions of an electric light power franchise that the city receive certain free service based on the number of subscribers and that a list of such subscribers be filed semi-annually with the city clerk, are valid conditions and constitute part of the franchise.—*City of Yonkers v. Yonkers Electric Light & Power Co., N. Y.*, 159 N. Y. Supp. 439.

54. Negligence—It is negligence for electric light company to maintain in streets of city "primary wire" carrying high voltage of

electricity, without insulation.—*Duncan Electric & Ice Co. v. Chrisman, Okla.*, 157 Pac. 1031.

55. Eminent Domain—Damages.—In proceedings for condemnation of land flooded by a dam, testimony as to the difficulty of tiling that part of a landowner's farm affected by the back water from the dam is competent on the question of damages.—*Southern Indiana Power Co. v. Keane, Ind.*, 112 N. E. 1004.

56. Jurisdiction—Where the record of a condemnation proceeding is silent as to a step necessary to confer jurisdiction, it must be assumed, in the absence of other showing, that every requirement necessary to confer jurisdiction was complied with.—*Young v. Red Fork Levee Dist., Ark.*, 186 S. W. 604.

57. Special Assessment—Where a city took possession of property condemned for street widening with the consent of the owners and failed to levy special assessments to pay the judgments for compensation, the owners are entitled to interest on the judgments.—*Mecartney v. City of Chicago, Ill.*, 112 N. E. 675.

58. Execution—Fraud.—The sale of property at execution sale by a sheriff in his official capacity does not prevent his purchasing it thereafter as an individual from the purchaser at such sale, where such purchase is not in pursuance of fraud, collusion, or prearrangement.—*Myers v. Drago Grain Co., Miss.*, 71 So. 874.

59. False Imprisonment—Probable Cause.—Before there can be probable cause warranting the arrest of a person, there must be at least some information connecting him with the alleged offense.—*Schneider v. Shepherd, Mich.*, 158 N. W. 182.

60. False Pretense—Forgery.—In trial for obtaining money by false pretenses based on presentation of forged check for payment, court properly charged that defendant could not be convicted unless check was forged or altered at time of presentation.—*Griffith v. State, Ohio*, 112 N. E. 1917.

61. Fraud—Misrepresentation.—Failure of stockholder to investigate before paying another stockholder for stock purchased from a third person, held not to destroy his right of action for misrepresenting the price which must be paid to induce the third person to sell.—*Voorhees v. Cragan, Ind.*, 112 N. E. 826.

62. Gaming—Recovery of Payment.—Where defendant paid money won in a gambling transaction to plaintiff, who afterwards returned it as part payment of a subsequent loss, he cannot recover the same.—*Hutton v. Curry, Ohio*, 112 N. E. 1019.

63. Guaranty—Condition.—Guaranty of company, indorsed on back of another's stock, to pay dividends on such stock of the other, if itself failed to do so, was conditional upon continued existence of such other, although there was clause in guaranty fixing its duration and providing that it should continue during life of guaranteeing company.—*Stagg v. Spray Water Power & Land Co., N. C.*, 89 S. E. 47.

64. Husband and Wife—Joint Recovery.—There is no error in allowing a joint recovery by a husband and wife on a contract signed by the husband, to which the wife added the words, "This is satisfactory to me," and signed her name.—*Cutler v. Spens, Mich.*, 158 N. W. 224.

65. Indictment and Information—Wife Deserter.—An indictment for wife desertion, making the charge virtually in the language of the statute, which does not use the word "willfully" in describing the offense, is sufficient.—*Miller v. State, Ark.*, 185 S. W. 789.

66. Insurance—Accidents.—A liability insurance policy, pursuant to Workmen's Compensation Act, limiting liability to accidents occurring in the contracting and building business of the employer, does not cover accidents in work not connected with such business.—*Bayer v. Bayer, Mich.*, 158 N. W. 109.

67. Change of Beneficiary—Where the constitution of a benefit insurance association permitted change of beneficiary upon signing of a waiver of original certificate, insured had right, without consent of beneficiary or notice to beneficiary by association, to change beneficiary

in his policy, as first beneficiary has no vested right in policy.—*New Era Ass'n v. Kuyat*, Mich., 158 N. W. 119.

68.—**Compromise.**—Holder of automobile accident insurance policy, who failed to pay \$3,750, which decedent's administratrix offered to accept in settlement of any damage recovered in excess of \$5,000, could not recover against insurance company damages occasioned by excess judgment recovered on account of company's failure to accede to compromise.—*McAleenan v. Massachusetts Bonding & Ins. Co.*, N. Y., 159 N. Y. Supp. 401.

69.—**Estoppel.**—That insurer refused payment when conditions precedent to payment had not been complied with, would not estop insurer from defending on ground of failure to furnish notice of fire and proof of loss as required by contract.—*Bailey v. First Nat. Fire Ins. Co. of Washington*, D. C., Ga., 89 S. E. 80.

70.—**Obvious Risk.**—Passenger on railway train did not as matter of law expose himself to obvious risk of injury within accident liability by going on platform of moving car preparatory to getting off at station.—*Gillis v. Duluth Casualty Ass'n*, Minn., 158 N. W. 252.

71. **Interest**.—Judgment for Damages.—Interest may be allowed by state on a judgment for plaintiff under Employers' Liability Act from the time it was rendered, if judgment is affirmed on appeal.—*Louisville & N. R. Co. v. Stewart*, U. S. S. C., 36 S. Ct. 586.

72. **Intoxicating Liquors**.—Damages.—In action against saloonkeeper under Civil Damage Act, plaintiff may recover for mental suffering caused by her disgrace from her husband's besotted condition in so far as it was contributed to by defendant's alleged illegal sales to him.—*Baker v. Mohl*, Mich., 158 N. W. 187.

73.—**Indictment and Information.**—Information charging unlawful conveyance of intoxicating liquors must allege place in county from and to which conveyance was made if known, and, if unknown, it must be so alleged.—*Robbins v. State*, Okla., 157 Pac. 1027.

74. **Landlord and Tenant**.—Evidence.—The sale of the premises four months after surrender by the tenant is no evidence to support a finding that the landlord released the tenant from his obligation to pay rent.—*Fehringer v. Wagner Stockbridge Trading Co.*, Colo., 157 Pac. 1071.

75.—**Tender.**—Where tenant in good faith attempted to make payments of rent by check as was his custom, and landlord refused a check, requiring payment in "money," tender thereafter of rent in currency was sufficient.—*Burritt v. Lunny*, Conn., 97 Atl. 756.

76. **Libel and Slander**.—Candidate.—Where plaintiff was a candidate for office, an affidavit imputing to him a statement that he had been pandering to the Catholic vote long enough, was not libel per se.—*Taylor v. Moseley*, Ky., 186 S. W. 634.

77.—**Defamatory Character.**—The statement by the father of plaintiff's husband, made to her father, that she was four months advanced in pregnancy when she had been married only about seven weeks, was slanderous per se, without any innuendo to show the defamatory character of the statement.—*Davis v. Davis*, Tex., 186 S. W. 775.

78.—**Criminal Libel.**—An information charging the publication of an article in defendant's newspaper charging the prosecuting attorney with misconduct rendering him unfit to occupy that position and bring him into public scandal and disgrace, charged a criminal libel.—*Nicholson v. State*, Wyo., 157 Pac. 1013.

79. **Master and Servant**.—Assumption of Risk.—Head brakeman of freight train does not assume risk of injury in attempting to board train operated at dangerous rate of speed unless speed and danger were so obvious that an ordinarily careful person would have observed it.—*Chesapeake & O. Ry. Co. v. De Atley*, U. S. S. C., 36 S. Ct. 564.

80.—**Assumption of Risk.**—Express declaration by Employers' Liability Act, § 4, as to assumption of risk, leaves in force in all other cases but that named, notwithstanding provisions of sections 3 and 5 of the act.—*Baughman*

v. New York, P. & N. R. Co., U. S. S. C., 36 S. Ct. 592.

81.—**Assumption of Risk.**—Railway fireman injured by stumbling over cinders between tracks while boarding a moving train with can of drinking water in his hand held to have assumed the risk of the situation where he had knowledge of the cinders.—*Jacobs v. Southern Ry. Co.*, U. S. S. C., 36 S. Ct. 588.

82.—**Evidence.**—Where person who threw missile appeared to be in charge of circus tent and grounds and openly engaged in taking down tent, jury may infer that he was in employ of circus owners, in control of their property.—*Robinson v. Doe*, Mass., 112 N. E. 1007.

83.—**Hazardous Employment.**—An employee, whose principal duty is to sell women's clothing, is not engaged in a hazardous occupation, within group 38 of section 2, Workmen's Compensation Act, merely because in the course of his duty as salesman he incidentally goes to the factory to obtain completed garments.—*Lyon v. Windsor*, N. Y., 159 N. Y. Supp. 162.

84.—**Safety Appliance Act.**—Abandonment by plaintiff of his claim under federal safety appliance acts in action based on them and Employers' Liability Act, for injuries to a brakeman working an automatic coupler, did not withdraw all evidence of defects in coupler so as to establish as a matter of law, assumption of risk.—*St. Louis & S. F. R. Co. v. Brown*, U. S. S. C., 36 S. Ct. 602.

85.—**Reliance on Master.**—A member of section crew of lumber company ordered by his foreman to go upon a trestle had the right to assume that there was nothing which rendered it less safe than it appeared to be, and that ordinary care had been exercised to make it as reasonably safe.—*Clark County Lumber Co. v. Hannon*, Ark., 186 S. W. 615.

86.—**Workmen's Compensation Act.**—Under Workmen's Compensation Act, a workman disabled in the course of his employment by hernia is entitled to compensation, although there was previous structural weakness in the region where the injury occurred.—*Bell v. Hayes-Ionia Co.*, Mich., 158 N. W. 179.

87.—**Workmen's Compensation Act.**—Under Workmen's Compensation Act, pt. 2, §§ 5, 12, insane wife, who had been in state asylum for nine years prior to decedent's death, supported by the state without contribution from him, held not a dependent, and hence not entitled to participate in award.—*Roberts v. Whaley*, Mich., 158 N. W. 209.

88.—**Workmen's Compensation Act.**—Under Const. art. 1, § 18, and Workmen's Compensation Law, §§ 2, 10, 11, 13, 14, 15, 29, 52, and 53, an employee cannot sue for further compensation for pain and suffering or disfigurement after receiving compensation from the employer under the act.—*Connors v. Semet-Solvay Co.*, N. Y., 159 N. Y. Supp. 431.

89.—**Wrongful Discharge.**—In action for wrongful discharge of company of actors without two weeks' notice provided for in written contract of employment made by defendant's general manager, defendant is presumed by law to have knowledge of contract under which plaintiffs were playing at his theater.—*Ferguson v. Majestic Amusement Co.*, N. C., 89 S. E. 45.

90. **Mines and Minerals**.—Implied Covenant.—In oil and gas lease for specific term requiring lessee to drill well or pay stipulated rental for delay, there is no implied covenant for diligent operation.—*Carper v. United Fuel Gas Co.*, W. Va., 89 S. E. 12.

91. **Municipal Corporations — Emergency.**—Chief of fire department merely by virtue of office has no right to destroy private property, and to constitute a defense for his act when he does so he must disclose facts constituting emergency under which exercise of police power will justify such extreme measure.—*Smith v. McCormick*, Mont., 157 Pac. 1010.

92.—**Negligence.**—Automobile owner, who drove car without having been examined and without license authorizing her, in violation of ordinance, did not thereby lose right of action against express company which negligently

backed truck out of alleyway and collided with her car to its injury.—*Zageir v. Southern Express Co.*, N. C., 89 S. E. 43.

93. **Ordinance.**—Ordinance, requiring rat-proofing to check bubonic plague, is not invalid on ground that bubonic plague is cognizable only by the state board of health.—*City of New Orleans v. Mangiarisina*, La., 71 So. 886.

94. **Res Ipsa Loquitur.**—That a team is running away on a city street, unattended by any person, raises the presumption of negligence against the owner, but no such presumption arises if the team is accompanied by the driver.—*Willis v. Semmes*, Miss., 71 So. 865.

95. **Negligence—Imputability.**—An occupant of an automobile as a guest of the owner on the occurrence of an accident, due to the negligence of the driver, over whom the occupant exercised no direction or control, was not liable to one injured thereby.—*Hutchings v. Vacca*, Mass., 112 N. E. 652.

96. **Novation—Additional Security.**—In action for balance due on note given as collateral for a loan, signed by defendant as indorsers, held that, where payee merely received another party as an additional debtor and continued to hold the other claims as still existing, the principal debt and the accommodation indorser's obligation were not extinguished by novation.—*Commercial Nat. Bank v. Sanders*, La., 71 So. 891.

97. **Nuisance—Abatement.**—Those whose common private rights are affected by a public nuisance have such a community interest as entitles them to unite in an action to abate it.—*Louisville & N. R. Co. v. Franklin*, Ky., 186 S. W. 643.

98. **Partnership—Evidence.**—In action against a drug store partnership for coal ordered, evidence that order was on the firm letter head and by the firm signature, but by one partner for his individual account unknown to the other partner, held to warrant a verdict only against the ordering partner individually.—*Reed Coal Co. v. Fain*, N. C., 89 S. E. 29.

99. **Principal and Agent—Ratification.**—Knowingly accepting the benefits of an unauthorized employment amounts to a ratification of such contract of employment, as is in the nature of an estoppel to deny the authority to make such contract.—*National Life Ins. Co. v. Headrick*, Ind., 112 N. E. 559.

100. **Scope of Authority.**—The act of reducing a contract of employment to writing is within the apparent authority of the general manager of a theatrical enterprise.—*Ferguson v. Majestic Amusement Co.*, N. C., 89 S. E. 45.

101. **Principal and Surety—Contribution.**—If one or more of the co-sureties in a suit for contribution are insolvent, the complainant can in equity obtain a proportionate increase of contribution from the others who are solvent.—*Comstock v. Potter*, Mich., 158 N. W. 102.

102. **Railroads—Instruction.**—Where evidence showed that defendant's train blocked street crossings one-half hour at midnight, preventing plaintiff from reaching home, causing illness, and ruining her wearing apparel, peremptory instruction for defendant was error.—*Parker v. Southern Ry. Co.* in Mississippi, Miss., 71 So. 912.

103. **Receivers—Assignee.**—A receiver of a lessor, who had mortgaged the premises, is not an assignee of the lessor, and so cannot sue in his own name for rent accruing.—*Noble v. Brooks*, Mass., 112 N. E. 649.

104. **Priority.**—Where it was adjudged that it was necessary that a receiver be appointed to operate a business as a going concern, receiver's certificates ordered by the court to meet the necessary expenditures of such operation take priority over prior indebtedness of the concern.—*Armour & Co. v. People's Laundry Co.*, N. C., 89 S. E. 19.

105. **Sales—Contract.**—It is proper for the seller of fertilizer to limit his liability by inserting in the sale contract a proviso that he shall not be liable for any results of the use of fertilizer or for any loss of crops.—*Carter v. McGill*, N. C., 89 S. E. 28.

106. **Evidence.**—In an action for failure to deliver contracted timber, where plaintiff's testimony was that defendant orally contracted to deliver between 2,000,000 and 3,000,000 feet of timber, plaintiff could not recover for more than the smaller amount.—*Arthur Delapierre Co. v. Chickasaw Lumber Co.*, Miss., 71 So. 872.

107. **Goods to be Manufactured.**—Where a contract for goods to be manufactured required delivery within 56 days after furnishing specifications, to be furnished by defendant on a certain date, although defendant failed to furnish them until 2 days thereafter, plaintiff was not relieved from delivery within 56 days of the date of furnishing the plans.—*Federal Terra Cotta Co. v. Potterton Bros.*, N. Y., 159 N. Y. Sup. 121.

108. **Implied Warranty.**—A provision in a contract for sale of automobiles that "the cars are 1912 models and are to stand sold as they are on this date in consideration of the special price" negated an implied warranty that cars were reasonably fit for the use intended.—*Detroit Trust Co. v. Engel*, Mich., 158 N. W. 123.

109. **Mistake in Telegram.**—Where plaintiff sent a message offering to buy cotton seed at \$20, but the telegraph company delivered a message offering to buy at \$22, plaintiff would not be compelled to accept the seed at \$22.—*Mt. Gildead Cotton Oil Co. v. Western Union Telegraph Co.*, N. C., 89 S. E. 21.

110. **Specific Performance—Option.**—Specific performance is a proper remedy to enforce the terms of a valid option the holder of which has tendered payment within the specified time.—*Cozad v. Johnson*, N. C., 89 S. E. 37.

111. **Taxation—Collection of Tax.**—A collector's statement that the tax on property sold was unpaid, and that he had not been able with diligent inquiry to discover any personal property out of which it could be collected by levy and sale, was a sufficient reason for failure to collect.—*Smith v. Russell*, N. Y., 159 N. Y. Sup. 169.

112. **Injunction.**—One liable for taxes having personal property in the county out of which the tax may be made may enjoin sale of his realty for payment of such taxes.—*Barnum v. Rallihan*, Ind., 112 N. E. 561.

113. **Telegraphs and Telephones—Illegal Purpose.**—A public telephone company cannot be required to furnish service to subscribers for use in illegal purposes.—*People ex rel. Restmeyer v. New York Telephone Co.*, N. Y., 159 N. Y. Sup. 369.

114. **Negligence.**—Plaintiff, who claimed damages for error in transmitting a telegram, could not recover expenses of a trip which merely followed and had to do with correcting the error, but was not made necessary by it and did not result from it.—*Mt. Gildead Cotton Oil Co. v. Western Union Telegraph Co.*, N. C., 89 S. E. 21.

115. **Trover and Conversion—Damages.**—The measure of damages for the conversion of an automobile is the value of the car at the time converted, with interest thereon.—*Baxter v. Woodward*, Mich., 158 N. W. 137.

116. **Trusts—Confidential Relation.**—That a grantee had been grantor's counsel prior to the date of the conveyance would not of itself establish a fiduciary relationship sufficient to justify a decree of constructive trust in favor of grantor.—*Koehler v. Haller*, Ind., 112 N. E. 527.

117. **Vendor and Purchaser—Notice.**—Where an innocent purchaser for value without notice had knowledge that the barn of an adjoining owner projected slightly over the boundary line, he was charged with notice only of such owner's claim to the land actually occupied.—*Robertson v. Smith*, Mich., 158 N. W. 207.

118. **Weapons—Negligence.**—Parents of boy not quite 16 were not guilty of negligence solely because they put a shotgun into his hands.—*Wood v. O'Neill*, Conn., 97 Atl. 753.

119. **Wills—Children.**—In respect to wills and statutes, the word "children" will also include "grandchildren," where intention to use the word in such broader extent is evident.—*In re Meng*, N. Y., 159 N. Y. Sup. 535.